



**TO:** INTERESTED PARTIES  
**FROM:** HUD OPA  
**SUBJECT:** MORTGAGE SERVICING SETTLEMENT: MYTH VS. FACT  
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## **Myth vs. Fact**

### *Setting the Record Straight about Historic Mortgage Servicing Settlement*

On February 9, the Department of Justice, the U.S. Department of Housing and Urban Development, other federal agencies, and 49 state attorneys general announced the largest federal and state settlement agreement in history with the five major mortgage servicers for their mortgage servicing practices. This \$25 billion agreement is the most significant action to hold the banks accountable since the housing crisis began and represents an important step in helping the housing market to recover, while strengthening the overall economy.

The agreement has the potential to help nearly two million American homeowners through a variety of means, including loss mitigation tools such as principal reduction and refinancing of loans for borrowers who owe more on their house than it is worth ("underwater" homeowners), payments of billions of dollars to federal and state parties, and payments directly to individuals who lost their homes to foreclosure and meet certain other criteria. States are using their settlement funds for a variety of purposes, including housing counseling, consumer education, borrower hotlines and other vital actions.

This large and complex settlement has generated misunderstandings, rumors and even some falsehoods. This post helps sets the record straight.

**Myth:** *The American taxpayers will subsidize the settlement.*

**Fact:** There is a mistaken notion that there is a taxpayer subsidy because modifications performed under the Treasury's Home Affordable Modification Program (HAMP) are not excluded from the settlement. In reality there is no such subsidy. Servicers cannot use HAMP incentives (or any other government subsidies) to meet their obligations under the settlement, plain and simple. Here are the facts:

HAMP pays incentives to encourage mortgage modifications. While those incentives occasionally include payments for reducing principal, most HAMP modifications do not include principal reduction.

The settlement does not give any credit for these HAMP modifications—those that involve payment reduction through a decrease in interest rate or an extension of the term, but no principal reduction. Of the almost 1 million permanent HAMP modifications done to date, the vast majority—more than 95



percent—fall into this category. Again, servicers do not receive any credit under the settlement for these modifications.

For HAMP modifications that do include principal reduction, servicers only receive credit for the portion of the principal reduction that they themselves pay for, not for the portion covered by incentives in the program. In other words, if a servicer receives a HAMP investor incentive payment of 20 cents for every dollar of principal reduction, it can receive credit at the applicable rate on the remaining 80 cents. However, in no event can the servicer receive more under the settlement than it would have in the absence of HAMP incentives. Thus, there is no “double” credit.

**Myth:** *Americans who lost their homes will only receive \$2000 in compensation.*

**Fact:** In the summer of 2010 when HUD initiated a large scale review of the Federal Housing Administration’s largest servicers we found that early in the process, homeowners, some of whom were only 30 days behind on their mortgage, never even received a call from their lender to provide options that may have been available to them.

In other cases, participating parties found that lenders did nothing when borrowers ran into trouble because they lost their job or had a medical crisis. Many families suffered from such servicer misconduct. For instance, borrowers may have been charged fees they shouldn’t have been or had dropped calls, lost paperwork or otherwise were not provided the opportunity to avoid foreclosure when they sought help with their mortgages. Bottom line, banks did not take actions that they were required to take under FHA regulations or other state and federal law.

Because of these violations, through the settlement, a \$1.5 billion Borrower Payment Fund will be established to provide estimated cash payments of approximately \$1,500 to \$2,000 to borrowers whose homes were foreclosed upon between and including January 1, 2008 – December 31, 2011 and who meet other criteria. These payments do not prevent families who suffered much deeper harm or who wish to pursue additional avenues of relief from seeking or receiving additional compensation. Families who may have been improperly foreclosed on and lost their homes (if, for example, the proper party did not bring the foreclosure proceeding or the loan was not delinquent) could therefore be owed hundreds of thousands of dollars in damages. In fact, the settlement still preserves their ability to pursue additional actions through other processes such as the restitution program run by the federal banking regulators, or through private litigation. Additionally, it should be noted that the restitution program will compensate borrowers for the full harm and that will be paid by the banks separately from the settlement. We are committed to making sure that consumers are fully aware of these options and how to pursue them.

**Myth:** *The settlement will be paid on the backs of teachers, firefighter and unions because of pension or other investments in private label securities.*



**Fact:** Participating banks own the vast majority of the mortgage loans that this settlement is expected to affect. The settlement could affect some investor-owned loans, depending on existing agreements servicers have with those investors. When banks weigh which mortgage loans to modify as part of this settlement, they will do so based on first analyzing the costs and the benefits of minimizing their losses.

If a loan modification, including principal reduction, is projected to cost the creditor or investor less than foreclosure, the creditor will earn more on that loan.

In other words, this settlement will not force investors to incur losses. That's because any loan modification tied to this settlement will result in more of a financial return for an investor than a foreclosure would.

Moreover, we anticipate that the servicers will first target eligible loans already held on balance sheet, also referred to as their held-for-investment (HFI) portfolio. While servicers may look to loans committed to securitization trusts, they will have to follow a set of protocol because they can begin writing down principal on loans underlying bonds:

- First, the settlement in no way overrides any existing contractual agreements or requirements between the servicer and the investors. If investors do not allow for principal reduction in a specific securitization, then the servicers will not be able to utilize on loans underlying the securities.
- Second, principal write down modifications must be NPV positive.
- Third, loans must be delinquent or at imminent risk of default to qualify for modifications.
- Fourth, 2<sup>nd</sup> liens are written down according to HAMP 2MP.
- Fifth, 2<sup>nd</sup> liens greater than 180 days delinquent are extinguished.
- Lastly, the settlement creates an incentive to encourage servicers to work with investors to do economically rational principal write down modifications.

**Myth:** *Banks will not be held responsible for their actions related to origination and securitization practices.*

**Fact:** This historic settlement resolves certain alleged violations of civil law based on mortgage loan servicing activities and the servicers will be released only for that conduct. The settlement does not prevent state and federal authorities from pursuing criminal enforcement actions related to this or other conduct by the servicers- including civil rights, fair housing, fair lending and other violations. The settlement does not prevent the government from punishing wrongful securitization conduct that will be the focus of the new Residential Mortgage-Backed Securities Working Group, which President Obama announced during his State of the Union address. Additionally, in the servicing agreement, the United States also retains its full authority to recover losses and penalties caused to the federal government when a bank failed to satisfy underwriting standards on a government-insured or government-guaranteed loan; the United States also resolved certain FHA origination claims with Bank of America as part of this filing and with Citibank in a separate matter. The agreement does not



prevent any action by individual borrowers who wish to bring their own lawsuits. State attorneys general also preserved, among other things, all claims against the Mortgage Electronic Registration Systems (MERS), and all claims brought by borrowers.

The formation of a joint investigation task force headed up by senior Department of Justice officials, New York Attorney General Schneiderman and other federal and state partners will investigate the origination and securitization practices of the banks.

It was the banks' securitization and origination practices that were significant factors in the housing crisis. The servicing practices did not cause the crisis, but they did worsen the crisis, and that's why this settlement is so important. Other actions taken by the Obama Administration have helped to stabilize the market and with the settlement we are helping the recovery of the market.

Make no mistake, investigations will continue, and the settlement is just one significant step in holding banks accountable for the actions that led to the largest housing crisis since the Great Depression.

**Myth:** ***This settlement is too meager to address the full impact of the housing crisis and the banks' conduct.***

**Fact:** **This agreement does not - and is not intended to - solve or resolve all the issues and abuses related to the housing crisis.** This agreement is very narrow as to what it releases banks from. This settlement is primarily intended to address the servicing aspect of the crisis, which did not cause the housing crisis. The Residential Mortgage Backed Securities Working Group announced by the President in the State of the Union will investigate the securitization and origination abuses that did help cause the crisis it will also expand the investigations and will coordinate with state and federal officials to hold banks accountable.

Additionally, while the settlement was designed to provide immediate help to homeowners, banks are held to account and through this settlement will pay billions for their actions.

This agreement outlines a way not only to provide immediate relief to homeowners through a variety of ways, including principal reduction, refinancing and direct payments to those homeowners who lost their homes to foreclosure and meet certain other criteria. The settlement also provides us a model for how to improve the housing market moving forward including servicing standards and a model for principal reduction.

Additionally, we continue to work to make sure more homeowners benefit from this settlement and other programs. That is why we continue to pursue ways to help provide similar relief to the homeowners.



**Myth:** *Had the plaintiffs litigated these claims instead of settling, homeowners would have received greater compensation and sooner.*

**Fact:** Litigation takes a lot of time and resources and carries risks. While legal cases drag on, homeowners in desperate need of relief are left to watch and wait for an uncertain outcome.

Millions more homeowners could have lost their homes long before the court battles would have ended. The outcomes of litigation win or lose, are anything but certain.

Through the settlement, the parties were able to agree to steps that are more targeted at repairing the harms at issue than might have occurred had they proceeded to judgment.

As in any case, we took all of these factors into account and entered into a favorable settlement. Had we not come to the agreement, homeowners would not have gotten the same benefits.

**Myth:** *Banks have ignored or fallen through on their obligations under previous settlements and will do so again under this settlement.*

**Fact:** From the very beginning the Obama Administration made clear that it would hold those responsible for this crisis to account and this agreement does that.

Banks will pay at least \$25 billion, most of which will directly help homeowners, and if the remaining 6-14 institutions sign on it would grow to about \$30 billion with more than \$45 billion in benefit to homeowners. Unlike prior settlements banks cannot meet their obligations simply by offering help to homeowners. They will only get credit by actually delivering principal reduction and other help and if they don't the requirements will convert to cash payment and will result in obligations of an additional 25-40%. Moreover, the settlement forces servicers to fix the problems that led to the broad violations uncovered during this investigation.

Finally, to ensure that banks are doing what they have agreed to do, Joseph A. Smith will serve as Monitor in enforcing the settlement. As North Carolina's banking commissioner since 2002, Smith oversaw implementation of a leading foreclosure-prevention program; he has also served as Chairman of the Conference of State Banks Supervisors and was President Obama's nominee to serve as Director of the Federal Housing Finance Agency. The Monitor will oversee implementation of the extensive servicing standards required by the settlement; impose penalties of up to \$1 million per violation (or up to \$5 million for certain repeat violations); and publish regular public reports that identify any quarter in which the Servicer fell short of the standards imposed in the settlement. The settlement will be filed as a Consent Judgment in the United States District Court for the District of Columbia and remain in effect for three-and-a-half years.

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